

Fax Cover Sheet

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Comments:

Tunney Act Commentary
to the Proposed
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My Interest

I have been a software developer for five years, producing systems used by the Department of Defense. The terms of the Microsoft settlement will profoundly affect the manner in which I use computer systems professionally. Even in my home, where I program software and tinker with hardware both out of necessity and for my own amusement, I have a stake in seeing that the market provide competition and innovation.

The Findings

The responsibility of the Federal government, as it applies here, accorded by the Sherman Antitrust Act, is to prohibit behavior which deigns to continue monopolistic practices if those practices are deemed to restrain trade and are injurious to competition and economic liberty.

The behavior of Microsoft Corporation has been deemed by the U.S. District Court's Findings of Fact to be injurious as such:

- They have withheld technical information from the industry though the market lacks any alternative product for consumers to seek out.
- They have encouraged the development of software and data that would prevent competing software from functioning properly.
- They have threatened sanctioning of corporate partners who wished to build systems that included certain software that Microsoft wished to keep excluded.
- They have engaged in technical practices that had no particular innovation but to lock out competitors from such systems wherein Microsoft owns a monopoly.

The question of the breadth of power that Microsoft wields in both home and business markets is clear. The findings state that the market share for Microsoft systems on Intel platforms has stood at ninety-five percent or greater in recent years. It also describes "positive network effects" associated with OS software and applications; that more consumers will be more inclined to use a system as its user-base expands. This phenomenon, in a general sense, describes most of the barriers to competition and innovation that Microsoft has constructed.

Limiting the severity of these barriers should be the primary motivation of a final judgment.

The Current Remedy's Problems

The final judgment should succeed in one thing if it fails in all others, it should punish Microsoft for the behavior for which it has been deemed guilty. The current settlement,

by specifying no restrictions on the behavior of binding applications more closely to the operating system thereby tacitly allows such behavior that the District Court found inappropriate. This omission rewards such actions as has been deemed illegal, and would therefore leave the market worse than if no trial had been held at all.

Open Data Format Standards

There must be a remedy to require Microsoft's business systems: OS, office applications, business enterprise systems, and networking software, to use open industry standards for document and data formats. Microsoft has, itself, sponsored and advocated the creation of standards within the XML (Extensible Markup Language) family of languages. Enforcing the use of industry-accepted formats for common Internet protocols would allow the survival of competitors within the browser market. Without such measures, Microsoft may promote, and by sheer weight proliferate, the use of standards which lock out competitors and likewise consumers who do not or cannot license the latest Microsoft browser versions.

This involves requiring Microsoft to use industry-accepted data formats for the resultant files of its more commonly used systems, such as those encompassed by XML-based standards, or to publicly publish and promptly update data formats for systems where the industry has no definite single standard.

Possible standards include, but are not limited to, Microsoft Word word processing document data and templates, Microsoft Excel spreadsheet data and templates, Microsoft Powerpoint data and templates, Microsoft SQL, Microsoft Access database files, Microsoft Outlook client and Microsoft Exchange server email processing and transmissions data, Microsoft financial software, networking protocols, file-system protocols, file-system journalling information, and any immanent ".NET" systems protocols.

When Microsoft Word entered the field of word processing software, it had many viable competitors. At that time, they strived year after year to improve the power, quality, and stability of the application. One feature that allowed them access to the market was the program's ability to import foreign formats (formats from competing or archaic systems). Microsoft currently wields enough power to produce barriers to competitors choosing to emulate this practice: the document standards are much larger and represent many features including version control. Microsoft has already begun in the courts system and by promoting particular legislation, attempting to legally prohibit reverse-engineering of their data standards, and it is only inevitable that they will attempt to intimidate competitors based on document formats or business application standards.

Of course Microsoft can be held accountable only for how its own applications behave, and not for how others may use them. However, the remedy may specify that such open standards are to be provided by Microsoft's applications, especially for the benefit of contracts and programs required or funded by the U.S. Federal government.

Another category of software that open standards may apply to is that of proprietary device drivers for widely-used hardware that for one reason or another competitors have been to barred from using. One example is Win-modem technology which, when present on a computer, is inaccessible from many non-Microsoft operating systems. The practice of proprietary hardware is indeed so counter-productive that its exercise by Intel's competitors is largely responsible for Intel's, and thus Microsoft's, past successes. That Microsoft can now engage in this practice to no noticeable detriment bodes poorly for hardware innovation.

Liberating the Boot Sequence

Contractual requirements that Microsoft has forced upon OEMs that prohibit and subtly (and illegally) sanction against competing products being loaded in either the OS boot sequence or the computer's BIOS boot sequence should be dissolved and prevented from re-establishing in any form. The former (of the OS boot sequence) has inhibited the survival of competing Windows products by making it less convenient to operate non-Microsoft applications. The latter (of the BIOS boot sequence) has prevented the OEMs from selling, within normal distribution channels, multiple-boot systems, computers with more than one operating system.

Encouraging Competition on the Internet

The conventional reason cited for the breakup of the Standard Oil trust was that Standard controlled the resource (oil) as well as its primary distribution network (the railroads). The court should take into consideration that the resource in this case (the operating system and all of the applications that Microsoft claims are inseparable from it) will soon have as its primary distribution network the Internet itself. If Microsoft were to simply maintain its current market share of computers on the Internet, (though its share is, in fact, growing) it could soon devise a way to lock out systems running competing software, even if that software is running on a Microsoft OS.

This suggested remedy, therefore, is for the U.S. Federal government to be extremely vigilant in the future, and to make such a settlement that would enable the government to step in, without delay, to protect a company or organization for whom a new barrier to competition has been specifically implemented by Microsoft. The financial interests of the company or organization, and indeed the market itself, could ill-afford to wait out any major trial relating to such future actions as Microsoft undertakes. A "probationary period" should extend at least for five years from this settlement, during which time a compliance committee with power to overturn egregious practices should be in operation.

One past example of such behavior was not cited in the findings but nevertheless provides an example of where this remedy might have been utilized. If the services of an online greeting card company were to be rendered less functional by a new version of Microsoft Internet Explorer while Microsoft was simultaneously engaged in starting a competing online service, the U.S. Federal government could, during this probationary period, step in and force Microsoft to roll back the changes that created the problem or to

release a new version entirely correcting the problem. The customers who received the faulty version would be sent the correcting software at Microsoft's expense. This would occur expeditiously within a review board set up by this remedy, thereby allowing both the petitioner and the state, to save the time and expense of a new trial.

Finally

Given the current economic circumstances of many of Microsoft's potential competitors, this case may be the last opportunity to stem the expansion of a corporation that could very easily wield power over every sector of the economy. If a single entity were to have proprietary control over the protocols that constitute the Internet, that entity would have a hand in all information-based commerce and finance. Microsoft has continued many dubious practices throughout the course of this trial, including threatening license audits of civil government institutions. Microsoft considers itself above the law and the case settlement should not confirm their position.

Thank you.



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